

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 37 of 2004

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

NAGSHIBHAI NATHABHAI DADHVI

Versus

C B THARWANI

Appearance:

1. Criminal Revision Application No. 37 of 2004
MR KJ SHETHNA for Petitioner No. 1-3
RULE SERVED for Respondent No. 1
MR DHAVAL G NANAVATI for Respondent No. 2
(MR DN PATEL) for Respondent No. 2
MR KP RAVAL ADDL PP for Respondent No. 3

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 20/04/2005

ORAL JUDGEMENT

The present petitioners have filed this Revision Application under Section 397 read with Section 401 of the Code of Criminal Procedure challenging the judgement and order passed by the learned Sessions Judge, Valsad dated 6/10.12.2003 passed in Criminal Appeal No. 1 of 2002, whereby, the learned Judge has rejected the appeal being Criminal Appeal No. 1 of 2002 filed by the petitioners and confirmed the judgement and order passed by the learned Additional Chief Judicial Magistrate, Valsad dated 28.2.1990 passed in Criminal Case No. 19 of 1985, whereby, the learned Additional Chief Judicial Magistrate has convicted the petitioners for the offence punishable under Sections 135 (1) (b) of the Customs Act and accused No. 1 is ordered to suffer RI for 3 years and fine of Rs.15,000/- and in default of fine, further RI for 6 months, while the accused Nos. 2 and 3 are ordered to suffer RI for 1 year and fine of Rs.5000/- each and in default of fine, further RI for 3 months.

2. It is the case of the prosecution that Truck No. GRS-6414 was intercepted by the Custom Officer on 15.5.1984 and the petitioners were found in the said truck with smuggled goods and truck with smuggled goods were seized and statement of the accused under Section 108 of the Customs Act were recorded. The complaint was filed in the court of learned Additional Chief Judicial Magistrate and Criminal Case is registered as Criminal Case No. 19 of 1985. Thereupon, charge was framed at Ex.53 for the above mentioned offence. The accused pleaded not guilty to the charge and claimed to be tried. At the end of the trial, on appreciation of evidence adduced by the prosecution, it was proved by the prosecution beyond reasonable doubt that accused have committed offence under Section 135 (1)(b) of the Customs Act and learned Judge has convicted the present petitioners under Section 135 (1)(b) of the Customs Act and imposed sentence referred to earlier by judgement dated 28.2.1990.

3. Against the said judgement and order dated 28.2.1990, the present petitioners have preferred an appeal No. 1 of 2002 before the learned Additional Sessions Judge, Valsad and the learned Judge after hearing both the parties, dismissed the appeal by his judgement and order dated 6/10.12.2003 and against the said judgement and order, the present petitioners have preferred this Revision Application.

4. Heard Mr. Shethna, learned advocate for the petitioners, Mr. Dhaval Nanavati, learned Additional

Central Government Standing Counsel for respondent No. 2 Union of India and Mr. K.P. Raval, learned Addl.P.P. for the respondent No. 3 State of Gujarat.

5. During hearing, Mr. Shethna, learned advocate for the petitioners has taken me through the revision application and the documents attached thereto. He has submitted that the petitioners are poor persons and liability to maintain their families are on their shoulder and they are the only earning members in the family. He has also submitted that this is their first offence and 20 years have been passed after the incident took place. He has also submitted that present petitioners are on bail and they have not misused their liberty and no other offence is registered against them. He has also submitted that he is not pressing this revision application on merits but he is pressing this revision application only for the purpose of reduction of sentence imposed on the petitioners.

6. Mr. Dhaval Nanavati, learned Additional Central Government Standing Counsel for the respondent No. 2 has supported the judgement under challenge and submitted that in such type of economic offence, lenient view should not be taken by the court. He has also submitted that after considering all the materials on the record, both the courts below have rightly convicted the petitioners and prayed that the present revision application deserves to be dismissed. In the alternative, he has submitted that if the court is inclined to reduce the sentence of the petitioners, then heavy fine be imposed on the present petitioners.

7. Mr. Shethna, learned advocate for the petitioners has placed reliance in case of Inder Vs. State of Maharashtra, reported in AIR 1980 SC p.311. The Supreme Court has held as under :-

"In this appeal by special leave the appellant has been convicted under Section 135 (b) of Customs Act, 1962 and sentenced to two years' rigorous imprisonment and a fine of Rs.2000/-. He has also been convicted under Section 85 (ii) of the Gold Control Act and sentenced to two years rigorous imprisonment and a fine of Rs.2000/-. The sentences of imprisonment were directed to run concurrently. It appears that the appellant has already spent about a month in the jail and after a lapse of ten years, it does not appear to be conducive to the end of justice to send the appellant back to jail. In these

circumstances, therefore, while upholding the convictions of the appellant, we would reduce the sentence of imprisonment to the period already served. In lieu of the sentence remitted we impose a fine of Rs.15,000/- under each count, total being Rs.30,000/-, in default of six months' rigorous imprisonment on each count. The appellant is allowed to pay Rs.10,000/- within a month from today and the balance of the amount to be paid within six months from today. With this modification, the appeal is dismissed. Order accordingly."

He has also placed reliance in case of Jeevraj B. Jain Vs. Central Excise & Customs Deptt. and another reported in (2000) 10 SCC p.270. In para 2, the Supreme Court has observed as under :-

"Having applied our mind to the earlier decisions referred to above and the fact and circumstances indicated in the confessional statement which has been the basis of conviction and lapse of 30 years of time, we think the interest of justice will be fully met if instead of directing the appellants to go to jail for serving the balance sentence, we direct that each of them should pay fine of Rs.1 lakh (Rupees one lakh) within four months from today, failing which they will have to undergo the substantive sentence as directed in the impugned judgement. We accordingly so direct. The appeals are disposed of accordingly."

8. In this case also, as mentioned above, 20 years have elapsed and it is pertinent to note that this is the first offence committed by the petitioners in temptation of receiving meagre amount. It is also pertinent to note that no other offence is registered against the present petitioners nor they have misused the liberty granted to them. In these circumstances, this court is of the view that taking into consideration the view taken by the Apex Court in above cited decisions, lenient view should be taken and if sentence is reduced, then interest of justice will be fully met. In the circumstances, the order passed by the Additional Chief Judicial Magistrate, Valsad dated 28.2.1990 and judgement and order dated 6/10.12.2003 passed by the learned Sessions Judge, Valsad in Criminal Appeal No. 1 of 2002 are hereby set aside. The present petitioners are convicted for the offence under Section 135 (1)(b) of the Act. The petitioner No. 1 Nagshibhai Nathabhai Gadhvi is ordered to suffer RI for

4 months and fine of Rs.30,000-00 (Rs. Thirty Thousand only) and in default of fine, further, RI for 2 month and petitioners Nos. 2 and 3 i.e. Lakha Ramji Rayani and Raida Jetha Gadhvi are ordered to suffer RI for 2 months and fine of Rs.10,000-00 (Rs. Ten Thousand only) each and in default of fine, further RI for 1 month each. It is clarified that petitioners would be entitled to set off as provided in Section 428 of the Code of Criminal Procedure, 1973. The petitioners to pay fine within 6 weeks from today. The petitioners would be entitled to adjustment of fine, if any, paid in the lower court.

9. For the foregoing reasons, the present Criminal Revision Application deserves to be partly allowed. Rule is made absolute in above terms. R&P is ordered to be send back to the trial Court. The observations made by me hereinabove may not be treated as a precedent as the same are only in the context of the peculiar facts of this case.

(M.D. Shah, J.)

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